

b.) Remarks

The subject matter of claim 3 is now presented as claims 3 and 23. Claims 4 and 6 are amended to maintain their dependency.

Claims 1, 3 and 10-13 are rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim subject matter regarded as the invention. In support of the rejection, the Examiner states that

the metes and bounds of claims 1, 3, 10 and 13 are unclear and indefinite in the recitation of 'represented by' because it is a relative term subject what [sic] one would think is representative. Neither the claims nor the specification clearly set forth structural or functional requirements of what is 'representative' of SEQ ID NO:7.

This is not well-understood for several reasons.

First, despite the Examiner's statement, it is not at all seen how "represented by" is a "relative" term. Indeed, "represent" is not relative; represent means "constitute, be a specimen, example, typify, depiction". See Oxford American Dictionary (2001) at 1445. Nor - despite the Examiner's arguments - does "represented by" require, admit or even permit of any "structural or functional requirement", nor has even a single allegedly vague, indefinite or unclear construct been posited by the Examiner.

Secondly, the Examiner states represented by is a "relative term" but did not utilize form paragraph 7.34.03, which requires the Examiner to "explain which parameter, quantity or other limitation in the claim has been rendered indefinite." Simply identifying the term (as was done here) is insufficient; the burden is squarely on the PTO to make a

reasonable interpretation resulting in an indefinite construction. In re Morris, 44 USPQ2d 1023 (Fed. Cir. 1997). Nor has the Examiner provided any possible interpretation of the claim that is indefinite as required by form paragraph 7.34.01.

Thirdly, in any event, the term sequence “represented by SEQ ID NO:” is plainly both well-known to those of ordinary skill and well-accepted by the Patent and Trademark Office. Witness the 249 patents issued to date<sup>1/</sup> containing that identical phrase in their claims. *Ex parte Wu*, 10 USPQ2d 2031 (BPAI 1989).

Nonetheless, in response, solely in order to reduce the issues, “a... sequence represented by SEQ ID NO:” has been changed to --a... sequence of SEQ ID NO:--<sup>2/</sup>. Accordingly, this rejection is overcome. *Ex parte Wu*, supra.

In view of the foregoing, Applicants submit that all of the Examiner's concerns are now overcome. Since the claims are in allowable condition for the reasons of record, allowance of this application and prompt passage to issue are earnestly solicited.

Claims 1, 3, 4, 6, 10-13, 22 and 23 remain presented for continued prosecution. Rejoinder of claims 4, 6 and 22 is respectfully requested.

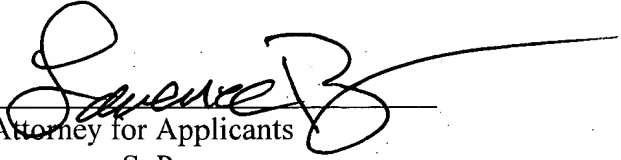
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<sup>1/</sup> From 1976 to January 10, 2005, per the USPTO website. See, e.g., U.S. Patent Nos. 6,838,556, 6,838,259, 6,833,253, 6,828,129 and 6,828,105, etc.

<sup>2/</sup> 20196 issued U.S. patents from 1976 to date.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

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